

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On January 22, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that the Motion for Summary Judgment [Doc. #14] by defendant Bank of America, N.A. be granted [Doc. #27]. On February 3, 2013, plaintiffs filed objections to the report [Doc. #28]. On February 12, 2013, defendant filed a response [Doc. #29].

The Magistrate Judge recommended granting defendant's motion for summary judgment because plaintiffs signed the loan documents, which included a merger clause. The Magistrate Judge also found that plaintiffs failed to present summary judgment evidence on their claims for fraud.

Plaintiffs object to the conclusion that any prior agreement was extinguished by the merger clause. The Magistrate Judge correctly set forth the law regarding merger clauses, which included that the merger clause would not overcome fraud or fraud in inducement. The clear language of the Texas Home Equity Note, Fixed Rate – First Lien “Note” and The Texas Home Equity Security

Instrument identifies the type of loan plaintiffs received, and plaintiffs agreed they signed these documents. Thus, the Magistrate Judge is correct, absent some sort of fraud, plaintiffs have no basis for their lawsuit.

Plaintiffs then object that the Magistrate Judge erred in finding that there was no summary judgment evidence of fraud. The court finds no error. Plaintiffs have not provided evidence showing a false representation by defendant, and therefore they have not met their burden to defeat defendant's motion. Plaintiffs concede they did not receive a home equity line of credit, as originally alleged, but instead received a conventional loan with a fixed interest rate for thirty years, secured by the equity in plaintiffs' home. Plaintiffs have not produced evidence that defendant made any knowingly false representations to plaintiffs in order to induce them into signing the loan documents.

Plaintiffs also object that the Magistrate Judge concluded that they have failed to indicate what documents were not produced by defendant. The Magistrate Judge indicated that he had denied plaintiffs' motion to compel and that plaintiffs failed to demonstrate what documents needed to be produced that would be relevant to the case. Plaintiffs failed to ask for reconsideration of the denial of their motion to compel. Moreover, plaintiffs fail to demonstrate what exact documents have not been produced that would alter the outcome in this case.

Overall, plaintiffs merely repeat the same arguments made in the briefing before the Magistrate Judge. The court finds no error and agrees that plaintiffs have not raised a material fact issue to prevent summary judgment.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by defendants this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and

conclusions of the Court.

It is, therefore, **ORDERED** that the Motion for Summary Judgment [Doc. #14] by defendant Bank of America, N.A. is GRANTED and plaintiffs' case is DISMISSED with prejudice. Defendant Angel Villegas has never appeared and shall be dismissed.

So **ORDERED** and **SIGNED** on March 8, 2013.

A handwritten signature in black ink that reads "Ron Clark". The signature is fluid and cursive, with "Ron" on top and "Clark" below it.

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Ron Clark  
United States District Judge